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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 SONOS, INC.,
19 Plaintiff,

20 vs.

21 GOOGLE LLC,
22 Defendant.
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Case No. 3:20-cv-06754-WHA
Consolidated with Case No. 3:21-cv-07559-
WHA

**GOOGLE LLC'S BRIEF ON SONOS'S
OPENING THE DOOR TO "CAST FOR
AUDIO" AND CAST PATENTS**

1 Pursuant to the Court’s directive this afternoon, Google submits the following brief
 2 explaining how Sonos’s introduction of deposition testimony regarding the Google’s “Cast for
 3 Audio” program is prejudicial to Google and opens the door to Sonos’s invalidated cast patents. See
 4 Dkt. 679-1 (5/8/2023 Trial Tr.) at 192:2-193:10 (“Casting has almost nothing to do with the multi-
 5 room thing ... If you get into cast, they are going to be allowed to say the Judge has already -- don't
 6 say the Judge -- that those have already been determined to be invalid.”).

7 Virtually all of the testimony Sonos played from Mr. Shekel’s deposition related to his work
 8 in 2013 and 2014 as Product Manager for Google’s “Cast for Audio” program. *See generally* Ex. 1
 9 at 42:2-110:5. Cast for Audio is not an accused product in this case. Cast for Audio was a Google
 10 program started in 2013 to allow third party speaker manufacturers, such as LG and Sony, to
 11 integrate Cast technology into their hardware devices. Ex. 1 (Final Shekel clip report) at 29:12-18.¹
 12 In connection with the Cast for Audio program, Mr. Shekel and other members of the Cast for Audio
 13 team met with dozens of third-party speaker manufacturers in 2013 and 2014. Importantly, Cast for
 14 Audio utilized Google’s **Cast** technology, which was an accused functionality for the ’615 and ’033
 15 patents, but is not an accused functionality for the ’885 or ’966 patents.

16 Mr. Shekel testified that his early interactions with Sonos, in the early 2014 time frame, was
 17 “in the context of Cast for Audio.” *Id.* at 42:2-9. *See also* Dkt. 641-3 (Google’s May 2014 “Cast
 18 for Audio” presentation to Sonos). But then Sonos introduced to the jury the following testimony,
 19 leaving the misleading impression that Google used information from the 2013 and 2014 meetings
 20 – which were about **casting** – improperly in the context of the technology accused of infringing the
 21 ‘855 and ‘966 patents at issue in this trial.

22 Q. And when did Google develop its own first-party multi-zone technology?

23 A. During 2015.

24 Q. So that was after -- that was after you looked at other speaker manufacturers'
 25 implementations of multi-zone technology; right?

26
 27 ¹ As Mr. Shekel explained, the Cast for Audio **program** is distinct from Chromecast Audio
 28 **product**, which was a Google Chromecast dongle released in late 2015. *Id.* *See* Ex. 1 (Final
 Shekel clip report) at 29:12-29:24.

1 A: So I wouldn't say that I looked at the implementation, but I used -- maybe I -- I
2 tried using multi-zone by few of the other manufacturers.

3 So chronologically, at least for some of the manufacturers, it happened before that
4 we -- before we launched it -- before we launched our own multi-room solution.

5 Q. And one of those was Sonos; correct?

6 THE WITNESS: We looked at Sonos and other manufacturers' multi-room
7 solution as part of our work in Cast Audio, and that -- some of those looks or trying
8 those out happened before we launched our multi-room solution.

9 Ex. 1 at 91:5-92:2. That is inaccurate and prejudicial for at least three reasons.

10 First, the Cast for Audio program utilized Google's **Cast** technology, not the functionalities
11 accused by Sonos's "Zone Scenes" patents. The Court has already ruled that Sonos's patents that
12 attempted to claim Google's Casting technology for itself are invalid. Mr. Shekel's deposition
13 testimony gave the jury the impression that Google's meetings with Sonos and evaluation of Sonos's
14 products **in connection with a potential Cast integration** relates somehow to Sonos's claimed
15 "zone scenes" technology. This is highly misleading and unfair.

16 Second, the deposition testimony played by Sonos is likely to confuse the jury because it is
17 undisputed that Sonos's products did not implement "Zone Scenes" until 2020 -- six years after Mr.
18 Shekel's Cast for Audio interactions with Sonos. Therefore the insinuation that Google acted
19 improperly by developing its multiroom solution after evaluating Sonos products in the context of
20 the Cast for Audio discussions is wrong. Google should be permitted to explain that to the jury in
21 order to mitigate any insinuation that it acted improperly with respect to any issue in this case.

22 Third, Google is concerned that in addition to the misleading impression created by Sonos's
23 designations of Mr. Shekel's Cast for Audio-related testimony, Sonos will further use it to argue at
24 closing argument that Google copied Sonos to advance willfulness and other intent elements of
25 Sonos's claims. This should not be permitted.

26 Accordingly, the Court should allow Google to tell the jury the full story regarding Google's
27 Cast technology and Sonos's invalidated "Direct Control" patents. In the alternative, the Court
28 should bar any argument from Sonos that Google's interactions with Sonos in the context of the
Cast for Audio program is relevant to any issue of willfulness or infringement.

Dated: May 10, 2023

Respectfully submitted,

/s/ Sean Pak

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Counsel for Google LLC

ATTESTATION

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on May 9, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: May 9, 2023

By: /s/ Sean Pak
Sean Pak